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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 SERVANT VENTURES, INC.,

9 Plaintiff,

v.

10 GAZELLES, INC.; and GAZELLES FL,  
11 INC.,

12 Defendants.

CASE NO. C18-5327 BHS

ORDER GRANTING  
DEFENDANTS' MOTION  
TO DISMISS

13 This matter comes before the Court on Defendants Gazelles FL, Inc., and  
14 Gazelles, Inc.'s ("Gazelles") motion to dismiss for lack of jurisdiction (Dkt. 22). The  
15 Court has considered the pleadings filed in support of and in opposition to the motion and  
16 the remainder of the file and hereby grants the motion for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On April 6, 2018, Plaintiff Servant Ventures, Inc. ("SVI"), doing business as  
19 Gazelles International Coaches, filed a complaint against Gazelles in Clark County  
20 Superior Court for the State of Washington. Dkt. 1-1. SVI asserts causes of action for  
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1 breach of contract, promissory estoppel, tortious interference with contract, and  
2 defamation. *Id.*

3 On April 25, 2018, Gazelles removed the matter to this court. Dkt. 1.

4 On May 3, 2018, the Court granted in part and denied in part SVI's motion for  
5 temporary restraining order. Dkt. 23.

6 On May 2, 2018, Gazelles moved to dismiss for lack of jurisdiction. Dkt. 22. On  
7 May 21, 2018, SVI responded. Dkt. 31. On May 25, 2018, Gazelles replied. Dkt. 35.

## 8 **II. FACTUAL BACKGROUND**

9 Verne Harnish, the founder and CEO of Gazelles, is the author, creator, and owner  
10 of certain books, programs, and curriculums specializing in leadership, strategic planning,  
11 and growth for individuals and companies looking to succeed and scale up in the business  
12 world. Dkt. 1-4, ¶¶ 1, 4. Individuals pay a fee to be trained and certified in Mr.  
13 Harnish's methods and intellectual property with the goal of becoming a coach. *Id.* ¶ 4.  
14 Once an individual becomes a coach, he or she pays a membership fee for the opportunity  
15 to utilize and train others in Mr. Harnish's methods and intellectual property. *Id.* In  
16 2001, Mr. Harnish created Gazelles International as a "division" of the Gazelles brand to  
17 focus on offering education and training to business coaches around the world. Dkt. 12-  
18 1, ¶ 2; *id.*, Ex. A at 3.

19 In approximately 2007, Mr. Harnish brought on Keith Cupp to operate the  
20 Gazelles International division. Dkt. 1-4, ¶ 5. Mr. Cupp asserts that he "took over the  
21 Gazelles International Coaches business from Mr. Ron Huntington." Dkt. 32, ¶ 3. Mr.  
22 Huntington lived and worked in the Seattle, Washington area at that time and is currently

1 an international coach residing in Seattle. *Id.*, ¶ 4. Mr. Cupp resides in Vancouver,  
2 Washington, and has maintained his offices continuously in Vancouver, where the  
3 Gazelles International business records are maintained. *Id.* ¶ 9. Mr. Harnish declares that  
4 “Mr. Cupp’s specific role in the Gazelles International division was to educate, train, and  
5 certify coaches based on the ideas and intellectual property created by Mr. Harnish.”  
6 Dkt. 1-4, ¶ 5.

7 In 2010, Mr. Cupp formed SVI in Washington. Dkt. 1-1, ¶ 6. Prior to that, Mr.  
8 Cupp alleges that he operated SVI as a sole proprietorship. *Id.* ¶ 7. Mr. Harnish declares  
9 that he was unaware that Mr. Cupp formed SVI or operated Gazelles International as SVI  
10 doing business as Gazelles International. Dkt. 1-4, ¶ 6; Dkt. 12-1, ¶ 4.

11 Regarding SVI’s contracts with its coaches, Mr. Cupp enters into the contracts on  
12 behalf of SVI. Dkt. 17-1 at 1. Based on the face of the contract, and a review of the  
13 record before the Court, there is no evidence that Gazelles is a party to any SVI coach’s  
14 contract. Mr. Cupp declares that seven Gazelles International coaches reside in  
15 Washington, and two other coaches reside in Portland, Oregon, marketing to and  
16 supporting Washington clients. Dkt. 32, ¶ 5. Mr. Harnish declares that Gazelles  
17 International contracts with approximately 250 coaches worldwide. Dkt. 1-4, ¶ 7.

18 Regarding Gazelles’ other contacts with Washington, Mr. Cupp declares that  
19 Gazelles has been involved in numerous events in Washington. Mr. Cupp cites eight  
20 “Scaling Up Workshops” held in Seattle and Portland, which advertised to and attracted  
21 individuals from Washington. Dkt. 32, ¶ 12. Mr. Cupp declares that these workshops  
22 involved extensive coordination and planning between Gazelles International and

1 Gazelles. *Id.* ¶¶ 9–12. Gazelles received some of the profits from these workshops. *Id.* ¶  
2 15. Mr. Cupp also declares that he is in constant and regular communication with  
3 Gazelles’ employees. *Id.* ¶¶ 10–11.

4 Mr. Harnish declares that he has travelled to Washington “a handful of times to  
5 deliver speeches for a non-profit called Entrepreneurs Organization.” Dkt. 22-1, ¶ 2.  
6 Otherwise, he is unable to “recall conducting any meaningful business while in the State  
7 of Washington.” *Id.*

8 Finally, it is undisputed that Gazelles operates a website that advertises to  
9 individuals in Washington.

### 10 III. DISCUSSION

#### 11 A. Standard

12 Claims against a defendant may be dismissed when a court lacks personal  
13 jurisdiction. Fed. R. Civ. P. 12(b)(2). When a defendant seeks dismissal on these  
14 grounds, the plaintiff must prove jurisdiction is appropriate. *Picot v. Weston*, 780 F.3d  
15 1206, 1211 (9th Cir. 2015). To determine whether it has jurisdiction over a defendant, a  
16 federal court applies the law of the state in which it sits, as long as that law is consistent  
17 with federal due process. *Diamler AG v. Bauman*, 134 S. Ct. 746, 753 (2014).

18 Washington grants courts the maximum jurisdictional reach permitted by due process.  
19 *Easter v. Am. W. Fin.*, 381 F.3d 948, 960 (9th Cir. 2004). Thus, the only question  
20 remaining for a Washington district court is whether the Court’s exercise of jurisdiction  
21 comports with the limitations imposed by due process. *Helicopteros Nacionales de*  
22 *Colombia, S.A. v. Hall*, 466 U.S. 408, 413 (1984). A court may not exercise jurisdiction

1 over a defendant if that exercise of jurisdiction “offend[s] traditional notions of fair play  
2 and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Fair  
3 play and substantial justice mandate that a defendant has minimum contacts with the  
4 forum state before it may be hailed into a court in that forum. *Id.* The extent of those  
5 contacts can result in either general or specific jurisdiction. *Goodyear Dunlop Tires*  
6 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). If the requirements for either are  
7 met, a court has jurisdiction over the parties. *Helicopteros*, 466 U.S. at 413–14.

## 8 **B. General Jurisdiction**

9 General jurisdiction permits a court to consider claims against a person or a  
10 corporation for any conduct, even that which occurred outside the forum state.  
11 *Goodyear*, 564 U.S. at 924; *Daimler*, 134 S. Ct. at 754. A corporation’s mere presence  
12 within a state is not sufficient to establish general jurisdiction. *BNSF Ry. Co. v. Tyrrell*,  
13 137 S. Ct. 1549, 1559 (2017). Rather, the corporation’s contacts with the state must be  
14 “so continuous and systematic as to render [it] essentially at home.” *Goodyear*, 564 U.S.  
15 at 919. “For an individual, the paradigm forum for the exercise of general jurisdiction is  
16 the individual’s domicile; for a corporation, it is an equivalent place, one in which the  
17 corporation is fairly regarded as at home.” *Id.* “Th[at] inquiry ‘calls for an appraisal of a  
18 corporation’s activities in their entirety.’” *BNSF*, 137 S. Ct. at 1559 (quoting *Daimler*,  
19 134 S. Ct. at 761).

20 A corporation is undeniably “at home” in both the state where it is incorporated  
21 and the state where it is headquartered. *Daimler*, 134 S. Ct. at 760. A corporation may  
22 also be considered “at home” outside those states, but only in “exceptional case[s].”

1 *BNSF*, 137 S. Ct. at 1558. “[T]he general jurisdiction inquiry does not focus solely on  
2 the magnitude of the defendant’s in-state contacts.” *Daimler*, 134 S. Ct. at 762 n.20.  
3 “Rather, the inquiry ‘calls for an appraisal of a corporation’s activities in their entirety’;  
4 ‘[a] corporation that operates in many places can scarcely be deemed at home in all of  
5 them.’” *BNSF*, 137 S. Ct. at 1558 (quoting *Daimler*, 134 S. Ct. at 762). “Under [the  
6 majority’s] reasoning, it is virtually inconceivable that such corporations will ever be  
7 subject to general jurisdiction in any location other than their principal places of business  
8 or of incorporation.” *Id.* at 1560 (Sotomayor, J., dissenting)

9       In this case, SVI argues that the Court has general jurisdiction over Gazelles. Dkt.  
10 31 at 2–14. Gazelles was incorporated in Virginia and then Florida and had a principal  
11 place of business in Virginia and now Florida. Dkt. 1-4, ¶ 2. Thus, because Gazelles was  
12 not incorporated in Washington and is not headquartered in Washington, SVI must show  
13 that Gazelles’ contacts with Washington are “so continuous and systematic as to render  
14 [it] essentially at home.” *Goodyear*, 564 U.S. at 919. First, SVI argues that Gazelles  
15 International, located in Washington, is a division of Gazelles. SVI contends that this  
16 assertion alone “ends the analysis.” Dkt. 31 at 12. SVI is wrong because mere presence  
17 in a state does not confer general jurisdiction over a national corporation. “The standard  
18 for general jurisdiction is high; contacts with a state must ‘approximate physical  
19 presence.’” *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006)  
20 (quoting *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir.  
21 2000)). “Put another way, a defendant must not only step through the door, it must also  
22 ‘[sit] down and [make] itself at home.’” *Id.* (quoting *Glencore Grain Rotterdam B.V. v.*

1 *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir. 2002)). More importantly,  
2 under recent Supreme Court precedent, the mere presence of a division of a company in a  
3 state does not approximate physical presence within that state. *See, e.g., BNSF*, 137 S.  
4 Ct. at 1559 (no general jurisdiction in Montana despite “2,000 miles of railroad track and  
5 more than 2,000 employees in Montana.”). Under these standards, SVI has failed to  
6 establish that Gazelles’ division in Washington amounts to the physical presence of  
7 Gazelles in Washington.

8         Second, SVI argues that Gazelles has established “‘continuous and systematic  
9 contacts’ approximating physical presence . . . .” Dkt. 31 at 13. The Court disagrees  
10 because SVI has failed to show that this is an “exceptional case” such that Washington  
11 may be considered Gazelles’ “home.” *BNSF*, 137 S. Ct. at 1558–59. In fact, because  
12 SVI operates as a separate corporate entity apart from Gazelles, the SVI and/or Gazelles  
13 International’s contacts and contracts within the state may not be attributed to Gazelles.  
14 In other words, it is unclear whether Gazelles operates in Washington at all. While  
15 Gazelles may have intended to operate within Washington, the allegations in the  
16 complaint and accompanying contracts establish that SVI was operating in Washington  
17 as a separate corporate entity, and SVI’s operations are not necessarily Gazelles’  
18 operations. Thus, SVI has failed to establish that its actions within Washington may form  
19 the basis for the exercise of general jurisdiction over Gazelles, and the Court must  
20 evaluate Gazelles’ other contacts with the forum.

21         Based on the record, the relationship between Gazelles and Mr. Cupp is more akin  
22 to a licensee-licensor relationship, which does not establish general jurisdiction within the

forum. *See, e.g., Red Wing Shoe Co., Inc. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1361 (Fed. Cir. 1998) (licensor’s “receipt of royalty income from its licensees for sales made in [forum state] is equally irrelevant.”). Similarly, Mr. Harnish’s sporadic appearances in Washington, even if he was here on behalf of Gazelles, combined with the few Scaling Up Workshops held in the area do not amount to contacts so “continuous and systematic” to make Washington Gazelles’ home. Therefore, the Court grants Gazelles’ motion on the issue of general jurisdiction.

### **C. Specific Jurisdiction**

Specific jurisdiction permits a district court to exercise jurisdiction over a nonresident defendant for conduct that “create[s] a substantial connection with the forum State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). To prove that specific jurisdiction exists in a tort-based action, a plaintiff must demonstrate that: (1) a defendant purposefully directed its activities at the forum state, (2) the lawsuit arises out of or relates to the defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable. *Picot*, 780 F.3d at 1211. A defendant purposefully directs its conduct toward a forum state when its actions are intended to have an effect within the state.

*Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2003). This occurs if the defendant: “(1) commit[s] an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Morrill v. Scott Financial Co.*, 873 F.3d 1136, 1142 (9th Cir. 2017).

In this case, SVI argues that the Court has specific jurisdiction over Gazelles. Dkt. 31 at 16–22. The main problem with SVI’s argument is that SVI has failed to establish



1 that Gazelles expressly aimed an intentional act at Washington. For example, SVI asserts  
2 that Gazelles “entered into long-term, open-ended contractual relationships with [SVI] in  
3 Washington, as well as with Mr. Huntington before [SVI].” Dkt. 31 at 16. While it may  
4 be true that Gazelles entered into contracts with Mr. Huntington, SVI has failed to show  
5 that Gazelles knowingly entered into any contract with SVI. Gazelles raised this specific  
6 issue in its motion. Dkt. 22 at 8 (“there is no contract between [Gazelles] and [SVI.]”).  
7 SVI failed to address it in response. Instead, the record shows and the complaint alleges  
8 that Gazelles entered into a contract with Mr. Cupp. Dkt. 1-1, ¶ 34 (“Gazelles Inc.  
9 entered into the Gazelles Contract with [SVI’s] predecessor in interest, the sole  
10 proprietorship of Keith Cupp dba Gazelles International Coaches”). This assertion is  
11 supported by the fact that Gazelles’ cease and desist letters are addressed to Mr. Cupp,  
12 and not to Mr. Cupp on behalf of SVI. Dkt. 30-1 at 2, 6. Although SVI alleges that SVI  
13 assumed the contract, *id.* ¶ 35, Gazelles has provided authority for the proposition that  
14 both an oral contract for professional services and a license contract may not be conveyed  
15 without the other party’s consent. Dkt. 35 at 11. Moreover, SVI fails to allege or submit  
16 evidence to establish that Gazelles either ratified or acquiesced to SVI’s alleged  
17 assumption of the contract with Mr. Cupp. Thus, SVI has failed to show that its breach  
18 of contract claims “arise[s] out of the [Gazelles’] forum-related activities.” *Fields v.*  
19 *Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 302 (9th Cir. 1986).

20 SVI’s strongest argument is that Gazelles is attempting to interfere with SVI’s  
21 business contracts. This argument, however, fails the effects test because the intentional  
22 act must be “expressly aimed at the forum state.” *Morrill*, 873 F.3d at 1142. “An

1 intentional act is one ‘denot[ing] an external manifestation of the actor’s will . . . not  
2 includ[ing] any of its results, even the most direct, immediate, and intended.’” *Id.* at  
3 (*Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 674–74 (9th Cir. 2012)). The  
4 majority of SVI’s allegations supporting this claim revolve around contracts with vendors  
5 in New Orleans for an annual summit. Dkt. 1-1, ¶¶ 54, 55, 58. These alleged actions are  
6 not directed at the forum state and will be ignored for purposes of specific jurisdiction.

7 SVI also alleges that Gazelles has attempted to interfere with SVI’s coaches’  
8 contracts. *Id.* ¶ 57. SVI, however, fails to show that Gazelles expressly aimed its alleged  
9 interference at SVI’s Washington-based coaches. The record shows that SVI has  
10 approximately 250 coaches under contract, with only ten located in Washington or  
11 nearby. SVI has submitted the emails that support its claims, and they are mass emails  
12 directed to groups of people without any specific indication that the email is expressly  
13 aimed at Washington. *See* Dkts. 27-1—27-4. In fact, three of the four emails have a link  
14 at the bottom stating “Click here to unsubscribe,” which indicates that the recipient has  
15 subscribed to a mass emailing list. *Id.* Based on these emails, SVI has failed to show  
16 that Gazelles targeted Washington-based coaches. “[M]ere injury to a forum resident is  
17 not a sufficient connection to the forum[; rather,] an injury is jurisdictionally relevant  
18 only insofar as it shows that the defendant has formed a contact with the forum State.”  
19 *Walden*, 134 S. Ct. at 1125. “As was the case in *Walden* and *Picot*, [the  
20 counterclaimant’s] injuries are entirely personal to her and would have been the same  
21 regardless of where she lived or did business.” *Job’s Daughters Int’l v. Yeast*, C16-  
22 1573RSL, 2018 WL 307133, at \*2 (W.D. Wash. Jan. 5, 2018) (granting motion to

1 dismiss counterclaim for lack of personal jurisdiction). Thus, these emails to general lists  
2 do not specifically target Washington or its residents.

3 SVI's next assertion is that the emails in combination with Gazelles' events in the  
4 local area form sufficient contacts to confer jurisdiction. Dkt. 31 at 17. The main  
5 problem with the event contacts is that Mr. Cupp declares that "[e]ach of the Scaling Up  
6 Workshops involved extensive marketing and advertising targeting Washington  
7 businesses to promote attendance and promoting *Gazelles International Coaches* based  
8 in Washington and the Pacific Northwest." Dkt. 32, ¶ 12 (emphasis added). Mr. Cupp  
9 also declares that:

10 The Scaling Up Workshops were planned and supported by SVI on  
11 behalf of the Gazelles International Coaches in that area. The Coaches  
12 actually conducted the Workshops and collected the fees from attendees, a  
13 portion of which were paid to Gazelles, Inc.

14 *Id.* ¶ 15. If SVI planned and supported these events that were conducted by SVI's  
15 coaches, then SVI has failed to establish that these contacts were intentional acts by  
16 Gazelles expressly aimed at Washington residents. Instead, these were acts on behalf of  
17 SVI, a Washington corporation, with royalties paid for the use of Gazelles' intellectual  
18 property. Based on these facts, SVI has failed to establish that these events constitute  
19 contacts by Gazelles in the forum state.

20 Finally, SVI argues that Gazelles aimed the alleged defamation at Washington.  
21 However, similar to the tortious interference claim, SVI has failed to show that Gazelles  
22 directed its activities toward Washington, as opposed to SVI's worldwide coaches in  
general. "For a State to exercise [specific] jurisdiction consistent with due process, the


1 defendant's suit-related conduct must create a substantial connection with the forum  
2 State." *Walden*, 134 S. Ct. at 1121. Alleged defamation to 250 people, ten of which  
3 reside in the forum, does not create a substantial connection to the Washington forum.  
4 Moreover, it seems that Gazelles committed the alleged defamation in connection with a  
5 conference in New Orleans, and SVI has failed to allege or establish that any of the ten  
6 Washington coaches observed the alleged defamation. Therefore, SVI has failed to  
7 establish specific jurisdiction over Gazelles for this claim as well.

#### 8 **IV. ORDER**

9 Therefore, it is hereby **ORDERED** that Gazelles' motion to dismiss for lack of  
10 jurisdiction (Dkt. 22) is **GRANTED**. The temporary restraining order (Dkt. 23) is  
11 dissolved for lack of jurisdiction.

12 The Clerk shall enter **JUDGMENT** in favor of Gazelles and close the case.

13 Dated this 19th day of June, 2018.

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16 BENJAMIN H. SETTLE  
United States District Judge  
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